

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 115 of 1986

with

CRIMINAL REVISION APPLICATION Nos 116 of 1986,
118 of 1996 and 119 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

THE PETLAD BULAKHIDAS MILLS CO.LTD.

Versus

STATE OF GUJARAT

Appearance:

MR KAMAL B. TRIVEDI with MS ANAR PARIKH of
M/S TRIVEDI & GUPTA for Petitioners
MR K.P. RAVAL, ADDL. PUBLIC PROSECUTOR for Respondent No. 1
MR KS ACHARYA for Respondent No. 2 in all matters

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE K.R.VYAS

Date of decision: 14/11/97

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

In these Revision Applications, the original complainant i.e The Petlad Bulakhidas Mills Co.Ltd. has challenged the order passed by the learned Judicial Magistrate First Class, Petlad on 23.12.1985 below applications Exhibits 5 and 7 in Criminal cases Nos. 1302/84, 1303/84, 1304/84, 1305/84 and 1306/84, holding that the cases filed under Section 630(1) of the Companies Act, 1956, by the complainant were barred by limitation under the provisions of Section 468(2) of the Code of Criminal Procedure, 1973, rejected the complaints.

2. According to the complainants, the respective respondent Nos. 2 of these petitions were given the premises belonging to the company at the time when they were its employees, and, though they were required to vacate the premises at the time of their superannuation on 9.1.1983, 8.6.1983, 25.5.1983 and 24.5.1983 respectively, they continued to occupy the premises unauthorisedly and were wrongfully withholding the property of the company.

The respondent No. 2 ex-employees made applications in the Criminal Cases - Exhibits 5 and 7, contending in application Ex.5 that since the complaints were filed more than one year after their retirement and since the offence under Section 630(1) of the Companies Act, was punishable only with fine, they were barred by limitation under Section 468 of the Criminal Procedure Code and also contending in the application Ex.7 that the provisions of Section 630 of the Companies Act were not applicable to the facts of the case and therefore, the Court had no jurisdiction to entertain the complaints under that provision. As regards jurisdiction, the learned Magistrate held in favour of the complainant and therefore, we are not concerned with that aspect of the matter in these Revision Applications, which are directed only against the learned Judicial Magistrate's order passed below Ex.5 dismissing the complaints on the ground that they were time barred.

In all these cases, the complaints were filed on 9.7.1984, which was after one year and some months of the retirement of these respondent ex-employees. The learned Magistrate had taken the date of retirement of these ex-employees as the basis for computing the period of limitation.

3. Under Section 630(1) of the Companies Act, 1956, it is inter-alia provided that if any employee of a company having any property of a company in its possession wrongfully with-holds it, he shall, on the complaint of the company, be punishable with fine, which may extend to Rs. 1000 rupees. Under Section 468 of the Code of Criminal Procedure, 1973 bar is imposed against taking cognizance of an offence of the categories specified in sub-section (2), after the expiry of the period of limitation prescribed therein. In respect of the specified category of offences, accordingly, under Sec. 468(2), the period of limitation in respect of the offences punishable with fine only is prescribed as six months. The period of limitation in relation to an offender would commence on the date of the offence, as provided by Section 269(1)(a) of the Code. It was therefore contended on behalf of these ex-employees that the complaints which were filed under Section 630(1) of the Companies Act having been filed more than one year after the dates on which they can be said to have with-held the property, were barred by limitation. This argument found favour with the learned Magistrate.

There is no dispute about the fact that on the date on which the complaints were presented, these ex-employees were still in possession of the property of the company. Therefore, not only at the time when they retired and did not return the property to the company, they with-held the property, even thereafter each day that they continued to remain in possession and did not return the property they can be said to have with-held the same from the company. The with-holding of the property of the company was a continuous conduct of these ex-employees till the date of the complaint. Therefore, the complaints which were filed against these ex-employees could not be confined only to the conduct of these ex-employees when they actually retired, but, these were complaints alleging wrongful with-holding of the property of the company each day thereafter till the filing of the complaint. Therefore, according to the complainant, the ex-employees were committing a continuing offence by wrongfully with-holding the property of the company. Under Section 472 of the Code of Criminal Procedure, 1973, in the case of a continuing offence, a fresh period of limitation would begin to run at every moment of the time during which the offence continues. The learned Magistrate has over-looked this provision. In view of this provision, it cannot be said that these complaints were filed beyond the period of limitation. The complaints could not therefore have been

dismissed on the ground that they were time barred.

Refusal to vacate company's quarter after retirement from company's service constitutes a continuing offence within the meaning of Section 472 of the Code, as held by the Supreme Court in Gokak Patel Vokhart Ltd. Vs. Dundayya Gurushiddaiah Hiremath and ors. reported in 1991(2) S.C.C 141. Therefore, the learned Magistrate was not right in dismissing the complaints on the ground that they were barred by limitation and the complaints will have to be heard on merits.

4. The other question which arises for our consideration is regarding the constitutional validity of the provisions of Section 630. When these matters were before the learned Single Judge, an affidavit was filed by these ex-employees, in which a contention was raised against the constitutionality of the provisions of Section 630 of the said Act. The learned Single Judge, by his common order dated 23rd October, 1991 passed in these Revision Applications, observed in paragraph 8 that there was no prohibition of law on any party whether the petitioner or the respondent, in raising a contention regarding the validity of any provision and that it was open to any party to raise such a question and the Court may, in its discretion, allow it to be raised. The learned Single Judge allowed the contention to be raised and directed the matter to be placed before the Division Bench in view of the challenge against the constitutional validity of the said provision. That is how the matters came up before us.

The learned Counsel appearing for these ex-employees reiterated the contentions against the constitutional validity of the said provision, which were raised in the affidavit, which was filed by the ex-employees in some of these Criminal Revision Applications. It has accordingly been contended that the provisions of Section 630 of the Companies Act, 1956 are violative of Articles 14 and 21 of the Constitution of India and beyond the legislative competence of the Union Parliament. It is contended that Section 630 of the Companies Act causes invidious discrimination between the employees of the company who occupy the premises of the company and the employees of Partnership firms, private individuals and co-operative societies, who occupy premises of such entities during service with them. It is submitted that discrimination between such different sets of employees is not warranted and such differentiation between employees of the companies and

other employees have no nexus with the object sought to be achieved by the Companies Act and that there is no valid basis for differentiating them from other employees. It is submitted that the employees who are given premises by their employers would all fall in the same class and there cannot be such different treatment given to the employees of one set of employees. It is further contended that there is inherent lack of power in the Union Parliament to enact the provisions of Sec.630 of the Companies Act. It is submitted that there was a relationship of landlord and the tenant brought about between the employers and the employees and the cases of these ex-employees would be covered by Section 13(1)(f) of the Bombay Rent Act, which takes care of the category of service tenants. It is submitted that the relationship of land-lord and tenant can simultaneously exist between the employer and the employee and therefore, in context of the employees occupying the premises of the employer on payment of rent or otherwise, the matter would fall within the legislative competence of the State legislature alone under Entry 18 of List II, and that would not be the subject matter of any law relating to companies.

5. Section 630 of the Companies Act, 1956 which is being challenged reads as under:-

"S.630. Penalty for wrongful withholding of property.-- (1) If any officer or employee of a company--

(a) wrongfully obtains possession of any property of a company; or

(b) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by this Act;

he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine which may extend to one thousand rupees.

(2)The Court trying the offence may also order such officer or employee to deliver up or refund, within a time to be fixed by the Court, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term which may extend to two years."

It is clear from this provision that it relates to property of a company which would mean both moveable and immovable property. This provision provides a penalty for wrongful with-holding of the property of a company by any officer or employee. Under entry 43 of the Union List contained in the Seventh Schedule to the Constitution, the Parliament is empowered to make law with respect to incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including co-operative societies. Under entry 44 of the said List, the Parliament can make law with respect to incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.

The provisions of Section 630 apply to such corporations, which are covered by entries 43 and 44. These provisions are designed to protect the property of a company and to prevent its officers or employees from wrongfully obtaining or keeping such property. The law reflected in this provision therefore, clearly relates to regulation of the companies. Providing for protection of the properties of such companies has a direct bearing on the aspect of the regulation of the company. Therefore, in our opinion, the parliament is empowered to make law under the entries 43 and 44 of the Union List for protecting the properties of a company. The object of the Companies Act inter-alia is to regulate the affairs of the companies including the control of the management and protection of the property of the company. The provisions of Section 630 of the Companies Act are quasi-criminal in nature and they have been enacted with the main object of providing speedy relief to a company when its property is wrongfully obtained or wrongfully withheld by an employee or officer or an ex-employee of officer or anyone claiming under them. As held by the Supreme Court in Smt. Abhilash Vinodkumar Jain Vs. Cox & Kings (India) Ltd. reported in AIR 1995 S.C 1592, the object of the Companies Act inter-alia is to regulate the affairs of the companies including the control of the management and protection of the property of the company. The object of Section 630 of the Act has therefore, a direct nexus with the object of the Act. Section 630 of the Companies Act is therefore, within the legislative competence of the Parliament and it squarely falls within the law making powers of the Parliament reflected in entries 43 and 44 of the Union List to the Seventh Schedule of the Constitution. There is therefore, no substance in the challenge against the said provision on the ground of lack of legislative competence of the

Parliament in enacting the said provision.

The Bombay High Court in *Kishan Avtar Bahadur Vs. Col. Irwin Extross and ors.*, reported in 59 Company Cases 417, had an occasion to consider the legislative competence of Parliament for enacting Section 630 of the said Act and for the reasons, with which we respectfully agree, rejected the contention that the provisions of Section 630 of the Companies Act so far as they relate to immovable property are ultra-vires the legislative competence of Parliament. It was held that as per entry 93 of the Union List, Parliament can legislate in respect of offences against laws with respect to any of the matters in the Union List. It was also held that the powers of the Parliament to legislate in respect of a company relating to immovable property covered by entries 43 and 44, were in no way curtailed by entry 18 appearing in List II to the Seventh Schedule to the Constitution of India, which inter-alia relates to land and land-tenures including the relation of landlord and tenant.

6. The provisions of Section 630 are designed essentially to safe-guard the property of the company as noted above and they are not provisions which can be called in pith and substance a law relating to land or land tenure, and, therefore, falling within entry 18 of the State List in the Seventh Schedule to the Constitution. These provisions of Section 630 are enacted with the object of providing summary procedure for retrieving the properties of the company, as held by the Supreme Court in the case of *Baldev Krishna Sahi Vs. Shipping Corporation of India Ltd. and anr.* reported in AIR 1987 S.C 2245. The Supreme Court in paragraph 7 of the judgement in terms observed that "The beneficial provision contained in Sec.630 no doubt penal, has been purposely enacted by the legislature with the object of providing summary procedure for retrieving the property of the company (a) where an officer or employee of a company wrongfully obtains possession of property of the company, or (b) where having been placed in possession of any such property during the course of his employment, wrongfully withholds possession of it after the termination of his employment. It is the duty of the Court to place a broad and liberal construction on the provision in furtherance of the object and purpose of the legislation which would suppress the mischief and advance the remedy".

The ex-employees of the company, who were admittedly given the premises during their employment and there was nexus between their employment and the

occupation of the premises of the company by them, were always expected to return the premises on termination of their employment or superannuation and they cannot be said to be persons who fall in the same class as tenants of Partnership firms, private individuals and other entities.

The provisions of Section 630 are wide in their amplitude and since the purpose is to protect the property of the company, one of the way of protecting the property of the company which is given to the employees is to provide for return of such property when the employment ends. Such a provision can never be said to be arbitrary or discriminatory. On the contrary it would make way for the subsequent employees for being allotted the premises and would prevent dishonesty on the part of the ex-employees who were required to return the premises to the company. In interpreting a beneficent provision the Court must be forever alive to the principle that it is the duty of the Court to defend the law from clever evasion and defeat and prevent perpetration of a legal fraud, as held by the Supreme Court in context of Section 630 of the Companies Act, in the case of Smt. Abhilash Vinodkumar Jain Vs. Cox & Kings (India) Ltd.(supra).

We therefore, do not agree with the contentions of the ex-employees that the provisions of Section 630 are discriminatory or that they deprive them of their right to life under Article 21 without following the procedure established by law. The challenge against the validity of Section 630 of the Companies Act therefore, fails.

Under the above circumstances, we allow these Revision Applications and set aside the impugned orders of the learned Magistrate dismissing the complaints on the ground that they are barred by limitation and direct the trial Court to proceed with the hearing of these cases in accordance with law and to complete the proceedings preferably within six months from the date of the receipt of this order.

At this stage, the learned Counsel for these respondent ex-employees requests for a certificate of fitness for approaching the Supreme Court against this order. In our view, the case does not involve any substantial question of law of general importance which requires to be decided by the Supreme Court, as contemplated by Article 133 and 134A of the Constitution of India. The matter entirely rests on the plain reading

of the provisions and the settled legal position.
Therefore, this is not a fit case where the certificate
can be granted. This request is therefore, rejected.

*/Mohandas

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CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE K.R.VYAS
Date of decision: 14/11/97

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

For the reasons stated in the judgement
all Revision Applications are allowed and the impugned
orders passed by the learned Magistrate dismissing the
complaints on the ground that they are barred by
limitation, are set aside with a direction to the trial
Court to proceed with the hearing of these cases in
accordance with law and to complete the proceedings
preferably within six months from the date of the receipt
of the order.

(R.K.Abichandani,J.) (K.R.Vyas, J.)

*/Mohandas